

### REMARKS

This amendment responds to the office action mailed March 29, 2004. Claims 1-3, 5-15, 17-32, 37-53, and 55-67 are currently pending. The Applicant acknowledges the allowance of claims 41-45, 47-52, and 59-67 and the allowance of the subject matter disclosed within claims 4, 6, 11, 16-20, 24, 25, 28-30, 36-39, and 54-56. The Office Action dated March 29, 2004 has been carefully considered. Claims 1, 15, 17, 19, 21, 46, 53, 57, and 58 have been amended for the purpose of expediting the prosecution of the present application. By these amendments, Applicants have not conceded to the arguments made by the Examiner that Ford, Khvisyuk, Pafford, and Aebi, either singly or in combination, (i) constitute prior art; (ii) anticipate; or (iii) render obvious the previously pending claims of the present application. Applicants expressly reserve the right to pursue the subject matter of the previously pending claims, for example, in a subsequent continuation application. Claims 4, 16, 33-36 and 54 have been canceled without prejudice. No new matter has been added. Reconsideration and allowance of the present application in view of the above amendments and the following remarks is respectfully requested.

In the Office Action dated March 29, 2004, the Examiner:

- rejected claims 1, 8, 15, 21-23, 26, and 40 under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 6,511,509 to Ford et al. ("Ford") in view of SU 833226B to Khvisyuk ("Khvisyuk");
- rejected claims 2, 3, 9, 10, 12-14, and 33-35 under 35 U.S.C. §103(a) as being unpatentable over Ford in view of Khvisyuk and in further view of United States Patent No. 6,371,988 to Pafford et al. ("Pafford");
- rejected claims 5, 7, 27, 31-32, 46, 53, and 57-58 under 35 U.S.C. §103(a) as being unpatentable over Ford in view of United States Patent No. 6,482,233 to Aebi et al. ("Aebi");
- allowed claims 41-45, 47-52, and 59-67; and
- objected to claims 4, 6, 11, 16-20, 24, 25, 28-30, 36-39, and 54-56 as being dependent upon a rejected base claim, but indicated that these claims would be otherwise allowable if rewritten in independent form.

### **Independent Claim 1**

Independent claim 1 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Khvisyuk. Claim 4 was objected to but indicated that it would be allowable if rewritten in independent form to include all the limitations of claim 1. The Applicant has amended claim 1 to include all limitations of allowable claim 4 per the Examiner's recommendation. Accordingly, it is respectfully submitted that independent claim 1 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 1 is respectfully requested.

Claims 2, 3, and 5-9 all ultimately depend from independent claim 1, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 2, 3, and 5-9 is therefore respectfully requested.

### **Independent Claim 10**

Independent claim 10 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Khvisyuk and in further view of Pafford. Independent claim 10 is directed to a method for restoring disc height between adjacent vertebrae having facing endplates, the method comprising all of the limitations of amended claim 1. Accordingly, it is respectfully submitted that claim 10 is allowable over the cited prior art. Withdrawal of this rejection and allowance of claim 10 is respectfully requested.

Claims 11-14 all ultimately depend from claim 10, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 11-14 is therefore respectfully requested.

### **Independent Claim 15**

Independent claim 15 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Khvisyuk. Claim 16 was objected to but indicated that it would be allowable if rewritten in independent form to include all the limitations of claim 15. The Applicant has amended claim 15 to include all limitations of allowable claim 16 per the Examiner's recommendation. Accordingly, it is respectfully submitted that independent claim 15 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 15 is respectfully requested.

Claims 17-20 all ultimately depend from independent claim 15, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 17-20 is therefore respectfully requested.

#### **Independent Claim 21**

Independent claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Khvisyuk. Claim 36 was objected to but indicated that it would be allowable if rewritten in independent form to include all the limitations of claim 21 plus any intervening claims. The Applicant has amended claim 21 to include all limitations of allowable claim 36 including intervening claims per the Examiner's recommendation. Accordingly, it is respectfully submitted that independent claim 21 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 21 is respectfully requested.

Claims 22-32 and 37-40 all ultimately depend from independent claim 21, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 22-32 and 37-40 is therefore respectfully requested.

#### **Independent Claim 46**

Independent claim 46 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Aebi. The Applicant would like to thank the Examiner for the indication of allowance of the subject matter disclosed in claim 28. The Applicant has amended claim 46 to substantially include all the limitations of allowable claim 28 including intervening claims. The Applicant has not include the limitation that the implant is substantially symmetrical about a mid-plane of the implant. It is respectfully submitted that such limitation is not necessary to distinguish over the cited prior art. It is respectfully submitted that independent claim 46 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 46 is respectfully requested.

#### **Independent Claim 53**

Independent claim 53 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Aebi. Claim 54 was objected to but indicated that it would be allowable if rewritten in independent form to include all the limitations of claim 53. The Applicant has amended claim 53 to include all limitations of allowable claim 54 per the Examiner's

recommendation. Accordingly, it is respectfully submitted that independent claim 53 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 53 is respectfully requested.

Claims 55 and 56 all ultimately depend from independent claim 53, and thus, it is respectfully submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 55 and 56 is therefore respectfully requested.

#### **Independent Claim 57**

Independent claim 57 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Aebi. The Applicant would like to thank the Examiner for the indication of allowance of the subject matter disclosed in claim 24 if rewritten in independent form. The Applicant has amended claim 57 to include all of the limitations of allowable claim 24. Accordingly, it is respectfully submitted that independent claim 57 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 57 is respectfully requested.

#### **Independent Claim 58**

Independent claim 58 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ford in view of Aebi. The Applicant would like to thank the Examiner for the indication of allowance of the subject matter disclosed in claim 24 if rewritten in independent form. The Applicant has amended claim 58 to include all of the limitations of allowable claim 24. Accordingly, it is respectfully submitted that independent claim 58 is allowable over the cited prior art. Withdrawal of this rejection and allowance of independent claim 58 is respectfully requested.

In light of the above amendments and remarks, it is respectfully submitted that claims 1-3, 5-15, 17-32, 37-53, and 55-67 are now in condition for allowance, and the Examiner is respectfully requested to reconsider this application with a view towards allowance. The Examiner is invited to call the undersigned attorney at 212-326-7883, if a telephone call could help resolve any remaining issues.

Date: May 28, 2004

Respectfully submitted,

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